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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 3rd October 2024

**S.R.O. No. 528/2024**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated, 27th August 2024 passed in the ID Case No. 36 of 2021 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore Alloys Limited, Balgopalpur, Balasore and Late Surendra Behera, substituted by Legalheirs namely, (1) Malati Lata Behera, Age- 46 years, Wife of Late Surendra Behera, (2) Diptimayee Priyadarshini Behera, Age-21 years, (3) Puspanjali Priyadarshini Behera, Age- 15 years, Daughters of Late Surendra Behera, all are presently residing At Brundabati Vihar, P.O. Balia, P.S. Sahadebkhunta, Dist. Balasore, PIN-756001 was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 36 of 2021

Dated the 27th August 2024

*Present :*

Shri Benudhar Patra, LL.M.,  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar,

*Between :*

The Management of  
M/s Balasore Alloys Limited,  
Balgopalpur, Balasore.

.. First Party

And

Late Surendra Behera,  
substituted by Legal heirs namely,  
(1) Malati Lata Behera, Age- 46 years,  
Wife of Late Surendra Behera,  
(2) Diptimayee Priyadarshini Behera, Age- 21 years, &  
(3) Puspanjali Priyadarshini Behera, Age- 15 years,  
Daughters of Late Surendra Behera,  
all are presently residing At Brundabati Vihar,  
P.O. Balia, P.S. Sahadebkhunta, Dist. Balasore,  
PIN-756001.

.. Second Party

Shri Subrat Mishra, Advocate	. . For the First Party
Shri Janmejaya Ray, Advocate & Associates.	. . For the 2nd Party

### AWARD

The Government of Odisha in the Labour & E.S.I. Department, have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 5934—LESI-IR-ID-0006/2020-LESI., dated the 19th July 2021.

### SCHEDULE

“Whether the termination of service of Shri Surendra Behera by the management of M/s Balasore Alloys Limited, w.e.f. 21st October 2019 is legal and or justified ? If not, what relief Shri Behera is entitled to ?

2. The case of the second party, in short, is that initially on being selected by the management of M/s Ispat Chrome Ltd. he was engaged as a “Trainee” and subsequently appointed as a “Junior Officer” under it w.e.f. 1st August 1996 with assignment of Clerical nature of duties, but while working as such his services were illegally terminated vide order dated the 16th May 2001 for which he raised a dispute before the Conciliation Officer, Balasore which culminated into a reference registered as I.D. Case No. 05 of 2006 before this Tribunal and as per the Award, dated the 11th April 2008 although the management passed orders for his reinstatement vide Order No. 134-SCL, dated the 28th June 2008 and accordingly he resumed duty w.e.f. 3rd July 2008, yet he was denied consequential service benefits, inasmuch as, he was not allowed notional increments for the period from 2001 to 2008. It is stated that concerning the matter he submitted a grievance petition to the management and so also the labour machinery and when notices in that regard were received by the management from the Labour Authorities, his services were again terminated by the management retrospectively w.e.f. 16th October 2019 vide Order No. 1234-BALB-HR, dated the 21st October 2019 in sheer violation of the provisions of the law laid down under the I.D. Act as well as Payment of Wages Act. Specifically, it is averred in the claim statement that the designation “Junior Officer” assigned to him was for name sake only but practically he was discharging manual, clerical and operational nature of duties under the direction, control and supervision of the Manager/ Assistant Manager of the Material Section, who used to supervise his work on day to day basis and he was never bestowed with any managerial/supervisory powers. It has been specifically pleaded by the second party that he having worked under the management as a permanent employee for almost twenty-three years, his termination amounts to retrenchment of service and the same is completely illegal owing to non-compliance of the provisions of the Industrial Disputes Act, 1947 (for short ‘the Act’). While admitting about receipt of Rs. 91,585 from the first party soon after his termination from service, the second party alleges that the same was a unilateral act on the part of the first party and thus the same in no way gives a legal sanctity to the illegal termination order dated the 21st October 2019. It is stated that while continuing under the first party he was holding the status of a ‘workman’ having a gross wage of Rs. 25,041 per month and the first party being an “industry”, the dispute regarding termination of his service is an ‘industrial dispute’ as defined under the Act and as such, this Tribunal has Jurisdiction to adjudicate the present dispute. Challenging his termination to be illegal and unjustified, the second party has taken a stand that as he is not gainfully employed elsewhere after his termination he is entitled to be reinstated in service with full back wages and consequential service benefits.

3. The first party management entered contest in the dispute and filed its written statement. Challenging the maintainability of the reference, it is pleaded by the first party that the second party being not a 'workman' covered under the definition of Section 2(s) of the Act, the Conciliation Officer as well as the Government without application of mind have referred the dispute for adjudication by the Tribunal. Further, it is pleaded by the first party that save and except the matter of records, the allegation of the second party, that in view of his demand in terms of Award in ID. Case No. 05 of 2006, dated the 11th April 2008 he has been illegally terminated from service, is not at all correct. Rather, it is on record that pursuant to the Award in ID. Case No. 05 of 2006 the second party was reinstated in job on 5th August 2008 but for his resigning and accepting full and final dues from the previous company i.e. M/s Shakti Chrome Ltd. (a sister concern of the first party), he was appointed as a fresh employee under the pay roll of the first party w.e.f. 1st July 2012 and while continuing under the first party as his performance was found unsatisfactory, resorting to Clause 11 of his letter of appointment dated the 30th June 2012 he was terminated from employment on payment of one month's salary in advance in lieu of notice; he being employed under it in the management cadre as a "Junior Officer" and used to receive more than Rs. 20,000 as remuneration per month. Besides, it has been pleaded that on termination of employment of the second party the management has already made full and final settlement of his dues amounting to Rs. 91,585 on 15th November 2019 which has also been duly accepted by the second party. In the background as above, the first party has prayed to answer the reference in the negative as against the second party.

4. Disputing almost all the averments of the written statement the second party has filed a rejoinder taking a further stand that the second party was a 'workman' under the first party and it being the settled principle of law that any clause in the appointment letter contrary to the statutory rights cannot be utilised against a worker to deny him service benefits, the action of the management will have to be tested on the anvil of fairness, propriety and *bona fides* irrespective of circumstances in which it was entered into. Denying the alleged poor performance, it is pleaded by the second party that allegations need to be established by the first party through cogent evidence, inasmuch as, if at all the alleged poor performance amounted to a misconduct, then holding of an enquiry into such allegations was imperative but there being no such enquiry conducted by the first party, the action of the first party is in violation of the principles of natural justice.

5. Basing on the pleadings of the parties, the following issues emerge for consideration :-

#### ISSUES

- (i) Is the reference maintainable?
- (ii) Is Shri Surendra Behera a workman as defined under Section 2(s) of the I.D. Act ?
- (iii) Is the termination of service of Shri Surendra Behera by the management of M/s Balasore Alloys Ltd. w.e.f. 21st October 2019 legal and/or justified ?
- (iv) If not, what relief the workman Shri Behera is entitled to ?

6. At the outset, it needs mention that during pendency of the dispute the second party having died, his legal heirs have been substituted as per orders passed by this Tribunal on 8th February 2022 and as such, the Result/Award of the instant dispute would be binding upon the first party as well as the legal heirs of the second party.

7. To substantiate their respective assertion, while on behalf of the deceased-second party, Malatilata Behera, the widow of the second party has examined herself as WW 1 and relied on

documents marked Exts.1 to 13, the first party examined its H.R./I.R. Sekh Jahed as MW 1 and relied on documents which have been marked as Exts. A to E.

## FINDINGS

8. *Issue No.(i) and (ii)*—The main thrust of argument of the first party on the point of maintainability of the reference is that the nature of duties assigned to the deceased- second party as well as the monthly remuneration attached to his post, if considered together, would preclude him from the definition of ‘workman’ as given in Section 2(s) of the Act, inasmuch as, for his discharging supervisory as well as administrative nature of duties and drawing more than Rs.10,000 per month as salary from the company, he cannot be regarded as a ‘workman’ and consequently the reference of the dispute reflects the non-application of mind of the Conciliation Officer as well as the Government and thus not maintainable in this Forum. On the other hand, the learned counsel representing the deceased-second party submitted that it is the settled principle of law that neither designation nor remuneration is a determinative factor to decide the status of an employee as to whether he comes under the definition of ‘workman’ or not and the real test is to be determined with reference to his principal nature of duties and functions and in order to prove such aspect, on behalf of the deceased-second party sufficient evidence is led to come to a conclusion that the deceased- second party was well covered within the definition of ‘workman’ while under the employment of the first party and basing on such materials a finding is inevitable that the claim laid on his behalf before this Hon’ble Tribunal is maintainable.

9. In view of the rival submissions, before discussing the evidence and materials available on record, I would like to refer to the statutory meaning of ‘workman’ as assigned under Section 2(s) of the Act.

Section 2 (s) : “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity ; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

In the context, it is not out of place to mention that the Hon’ble Apex Court in the case of S.K. Maini vs. M/s Carona Sahu Company limited and others (1994) 3 SCC 510 considering the legislative intention behind the definition of ‘workman’ have formulated a guiding principle to determine the status of an employee as ‘workman’ under the Industrial Disputes Act and in the said case it has been held as follows: -

“9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears

to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. vs. Burmah Shell Management Staff Assn.* 1971 AIR 922.

Further it has been held by the Hon'ble Apex Court in the case of *Devinder Singh Vs. Municipal Council, Sanaur*, reported in (2011) 6 SCC 584 that the source of employment, the method of recruitment; the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

Keeping in view the statutory meaning of 'workman' and the principle enunciated by the Hon'ble Supreme Court, now it is to be examined on the basis of materials available on record as to whether the second party was coming within the purview of 'workman' or not.

10. WW1, Malatilata Behera, the widow of the deceased-second party deposing on behalf of her husband has stated that her deceased husband had filed the claim statement in the dispute challenging termination of his service w.e.f. 21st October 2019 with a prayer for his reinstatement in service, full back wages and all other consequential service benefits but owing to his death during pendency of the dispute she as well as her two daughters have been substituted in place of her deceased husband. She stated that from the documents available on record she could know the service history of her deceased husband and supporting the pleas advanced in the claim statement she has stated that although her deceased husband was employed under the first patty as a "Junior Officer", yet he was all along discharging manual, clerical and operational nature of duties at the instruction/direction of other superior authorities such as Manager/Assistant Manager of Material Section and his work was being supervised by the said authorities as and when required and he did not have any managerial or supervisory powers. She placed on record the photo copies of documents pertaining to her deceased- husband, such as his appointment letter dated the 27th April 1995 as a "Trainee" under M/s Ispat Chrome Ltd. (Ext. 1); Appointment letter dated 19-09-1996 issued by M/s Ispat Chrome Ltd. (Ext. 2); the order of termination dated the 16th May 2001 issued by M/s Ispat Chrome Ltd. (Ext. 3); Award dated the 11th April 2008 passed by this Tribunal in I.D. Case No. 05 of 2006 (Ext. 4); Letter, dated 28th June 2008 whereby her deceased-husband was reinstated in service by M/s Shakti Chrome Ltd. pursuant to the Award passed in I.D. Case No. 05 of 2006 (Ext. 5); grievance petition dated the 16th May 2018 of her deceased-husband addressed to the Divisional Labour Commissioner, Balasore seeking re-fixation of his salary consequent upon his reinstatement in service (Ext. 6); letter, dated the 7th March 2018 of the



Asst. Labour Commissioner, Balasore asking the first party for submission of views on the grievance petition of her deceased-husband (Ext. 7); letter, dated the 30th August 2019 of the District Labour Officer, Balasore asking the first party to attend a joint discussion on the grievance of her deceased husband (Ext. 8); letters, dated the 27th August 2019 and 11th October 2019 of the District Labour Officer, Balasore asking the first party to show cause for violating the provisions of Section 17 (A) of the I.D. Act and allowing the first party a month's time to resolve the grievance of her deceased husband as per the statement furnished alongwith the petition (Ext. 9) and (Ext. 10), respectively; the order of termination dated the 21st October 2019 passed against her deceased husband by the first party giving effect to the order of termination retrospectively w.e.f. 16th October 2019 (Ext. 11); complaint petition dated the 24th October 2019 of her deceased husband addressed to the first party with copies to different authorities including the labour machinery (Ext. 12) and the notice, dated the 2nd November 2019 issued on such complaint by the Assistant Labour Officer, Balasore to the first party (Ext. 13). WW 1 was cross examined by the first party and it was elicited from her that the termination order, the 21st October 2019 was given effect to from closing of working hours on 22nd October 2019 and she also admitted Ext. A to be the order of termination of her deceased husband; identified Ext. A/1 to be the short signature of her deceased husband and as to the receipt of the same on 22nd October 2019. She also admitted that her deceased husband was serving under the first party as a Junior Officer and was drawing a monthly Salary of Rs. 20,000. She feigned her knowledge as to the employment and resignation of her deceased husband and receipt of full and final settlement from M/s Shakti Chrome Ltd. Though suggested, she could not say as to if her deceased husband was performing managerial and supervisory nature of job and was never assigned with any manual work. She could not say as to if her deceased husband was governed under the Model Standing Orders or the Industrial Employment Standing Orders.

Resisting the claim advanced on behalf of the deceased second party, the management has led evidence of Sekh Akhrjul, who is working under it in the capacity of HR/IR. He deposed that consequent upon the Award dated the 11th April 2008 passed in ID Case & No. 05 of 2006, the first party reinstated the deceased-disputant vide letter dated 28-06-2008 but did not allow him notional increment from 2001 to 2008 as no such finding was there in the Award entitling the deceased-disputant to such benefit. It is in his evidence that earlier the deceased disputant was on the pay roll of M/s Shakti Chrome Ltd., a sister concern of the first party and on his resigning there from he was appointed as a fresh employee under the first party w.e.f. 1st July 2012 and was designated as 'Junior Officer' in the management cadre and was paid more than Rs. 20,000 as his monthly salary. He stated that predominantly the deceased-disputant was discharging duties of managerial capacity and not assigned with any manual work. He has proved the letter of resignation dated the 1st June 2012 submitted by the deceased-disputant to the Director, M/s Shakti Chrome Ltd., (Ext. E), the letter of his appointment dated the 30th June 2012 issued by the first party (Ext. B). During cross-examination, MW 1 stated that prior to joining the party organisation the deceased was employed by M/s Ispat Alloys Ltd. in the year 1995 and while terminating his service w.e.f. 21st October 2019 no show cause was called for from him by the first party. Though he gave out in his cross examination that the deceased-disputant after resigning from M/s Shakti Chrome Ltd. on 1st June 2012 had submitted an application to the first party for employment, but he could not say as to if the said application has been filed before this Tribunal. He also stated during cross-examination that the second party was not entrusted with any specific work but he was operating computer and as it reveals from Ext. B, performing duties as instructed to him from time to time by the management.

11. On an analysis of the evidence, as discussed above, what transpires is that earlier on an Award being passed by this Tribunal in ID. Case No.05 of 2006 (Ext. 4) with a finding that the termination from service of the deceased-second party with effect from the 16th May 2001 was illegal and unjustified he was reinstated in service by M/s Shakti Chrome Ltd. (formerly known as Ispat Chrome Ltd.) vide letter dated the 28th June 2008 (Ext. 5) but due to his non-entitlement he was not paid any back wages. A perusal of Ext. 4, the Award of this Tribunal in ID. Case No. 05 of 2006, would reveal that despite the designation of "Junior Officer" the deceased disputant has been held to be a 'workman' and the matter having not been challenged by the management, rather was settled at rest by way of implementation of the Award, the management ought not to have pressed the said issue for determination particularly when the deceased second party was reinstated as per the Award and continued as a Junior Officer under it till the date of his alleged termination. That apart, when the Hon'ble Apex Court have formulated a guideline to examine the materials on record to arrive at a finding as to the principal nature of duties and functions of an employee and moreover it has been the consistent stand of the deceased-second party that all along he was discharging manual, clerical and operational nature of duties under the direction, control and supervision of his superior authorities and his work was being supervised by the Manager/Assistant Manager of Material Section and that he did not possess any managerial or supervisory powers and moreover as deposed to by MW 1, the deceased-second party was not entrusted with any specific work and he was operating computer and performing duties as per the instructions of the management, the first party being custodian of all records ought to have placed sufficient evidence to convince the Tribunal with regard to his discharging managerial nature of duties while working under it as the "Junior Officer". Besides, Clause 7 of the appointment letter of the deceased-disputant (Ext. B) discloses under the heading "Obligations and Responsibilities" that he was required to carry out the duties allotted to him from time to time to the entire satisfaction of the Management. In absence of any evidence showing the job of the deceased second party as "Junior Officer" was of supervisory and managerial in nature, this Tribunal is not in a position to exclude him from the purview of 'workman' as defined under Section 2(s) of the Act, even though he used to receive salary more than what has been prescribed under the Act.

12. 'In view of the discussions held above, the deceased-second party is held to be a 'workman' within the meaning of Section 2(s) of the Act and consequently the reference of the dispute is held to be maintainable.

13. *Issue No.(iii)*—This issue involves the question of legality and justifiability of the action of the first party in terminating the services of the deceased-second party. In the context, while the learned counsel for the first party takes the stand that the termination of service of the deceased-second party was as a result of his poor performance and the same is justified because of the stipulations in his letter of appointment dated the 30th June 2012 (Ext. B) and the HR Policy, the learned counsel appearing for the second party argued that in absence of any material either showing the poor performance of the second party or for that matter calling upon him to show cause for such performance or making any enquiry, the arbitrary action of the management is wholly illegal and not sustainable in the eye of law.

It reveals from Ext. A, the order of termination of employment of the deceased-second party that by invoking Clause-11 of the Appointment order (Ext. B) the management has terminated the services of the deceased-second party describing his services to be no longer required by it. For better appreciation, Clause-11 of Ext. B is extracted below :—

#### 11. TERMINATION

"On confirmation, this appointment is subject to termination by one-month notice or payment in lieu thereof, on either side. If your service is terminated

consequent on any disciplinary action, loss of confidence, no notice period will be required to terminate your appointment.

XX XX XX XX XX XX"

There would be no gainsaying of the fact that the deceased-second party was under the employment of the first party for a substantial period and the termination of his service was not preceded by any disciplinary action. Ext. A does not reflect any reason as to the cause of termination of employment of the deceased-second party. As it seems, the first party before putting an end to the employment of the deceased-second party had not followed the principle of audi alteram partem and in a whimsical manner resorting to the contract of employment all of a sudden ousted him from job and further without there being any request, unilaterally remitted Rs. 91,585 to the account of the deceased-second party vide Ext. C. A reference in this regard may be made to the judgment of the Hon'ble Apex Court in the Case of D.K.Yadav vs. JMA Industry [1993 SCC(3) 259], wherein it has been held that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. That apart, in view of the second party's rendering a permanent job under the first party, in the event of his termination the first party ought to have complied with the provisions of the Act instead of resorting to the stipulation contained in his letter of appointment ; he being a workman under it. So, viewing the case from any angle, the termination of service of the second party is not sustainable in the eye of law.

The Issue No. (iii) is accordingly decided in favour of the deceased-second party.

14. *Issue No. (iv)*—Next it is to be seen as to what relief the heirs of the second party are entitled owing to death of the deceased second party during pendency of the dispute. Obviously, upon death of the deceased- second party an order of reinstatement is not possible, even if the action of the first party is held to be illegal and unjustified. But, in view of the consistent stand of the deceased-second party in his claim statement that in the event of proper implementation of the Award of this Tribunal passed in ID. Case No. 05 of 2006, the deceased-second party would have been entitled to re-fixation of his pay in the year 2008, an analysis on the point is found to be necessary so as to award some monetary relief in favour of the deceased-second party. Although the deceased-second party has taken a plea that in all he had rendered almost 24 years of service under the first party, but as pointed out by the learned counsel for the management in view of clear admission of WW 1 in cross examination that Ext. B is the copy of letter of appointment of her deceased husband wherein Ext. B/1 is his signature and that the deceased second party had never protested/objected to such appointment, for all purpose the date of employment of the deceased-second party be construed as 30th June 2012 treating the same to be a fresh employment under the management. Considering the above submission and upon delving into the circumstances of the case, the Tribunal constrains to return a finding that with a view to avoid permanency and for that matter the rigours of law, the management has put much emphasis on Ext. E, the letter of resignation of the deceased-second party, though in fact after a few days it has again inducted the deceased in its establishment claiming the same to be a fresh employment. Looking to the claim of the deceased-second party and Ext. A, the Award in ID. Case No. 05 of 2006 which has already attained its finality, this Tribunal is of the view that owing to the illegal termination of service of the deceased-second party w.e.f. 21st October 2019, a compensation to the tune of Rs. 4,00,000



(Rupees four lakh) only in lieu of all his claims would meet the ends of justice. It is made clear that the awarded compensation in favour of the deceased-second party is subject to adjustment of the amount already received by him as per Exts. C and D and the balance amount be paid to the heirs of the deceased-second party within a period of two months of the date of publication of the 'Award' in the Official Gazette, or else the amount would carry a simple interest of 6% per annum till its realisation.

Issue No. (iv) is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA  
27-08-2024  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA  
27-08-2024  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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[No. 8600—LESI-IR-ID-0006/2020-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government